

NATURE OF CHARGE: Adulteration, Section 402 (a) (3), the article consisted in whole or in part of a decomposed substance by reason of the presence of sour and rancid coconut.

DISPOSITION: February 20, 1946. No claimant having appeared, judgment of forfeiture was entered and the product was ordered destroyed.

11279. Misbranding of peanut butter. U. S. v. Old Reliable Peanut Co., Inc., and James C. Hines. Plea of nolo contendere on behalf of the corporation; fine, \$150. Plea of not guilty by the individual; judgment of not guilty. (F. D. C. No. 20142. Sample Nos. 41827-H, 41828-H, 41833-H.)

INFORMATION FILED: June 27, 1946, Eastern District of Virginia, against the Old Reliable Peanut Co., Inc., Suffolk, Va., and James C. Hines, superintendent of the company.

ALLEGED SHIPMENT: Between the approximate dates of December 21, 1945, and January 4, 1946, from the State of Virginia into the State of North Carolina.

LABEL, IN PART: "Old Reliable Weight 8¾ Ozs. Net Peanut Butter."

NATURE OF CHARGE: Misbranding, Section 403 (e) (2), the article failed to bear a label containing an accurate statement of the quantity of the contents in terms of weight. The jars bore the statement "Weight 8¾ Ozs. Net," but they actually contained less than 8¾ ounces net of peanut butter.

DISPOSITION: July 15, 1946. A plea of nolo contendere having been entered on behalf of the corporate defendant, the court imposed a fine of \$50 on each of 3 counts, a total fine of \$150. A plea of not guilty having been entered by the individual defendant, the court, after hearing the evidence, found the individual defendant not guilty.

OILS AND FATS

11280. Adulteration and misbranding of salad dressing. U. S. v. Arthur H. Beck (Beck's Salad Dressing & Catering Co.). Plea of not guilty; verdict of guilty. Fine, \$200 and costs. (F. D. C. No. 14226. Sample Nos. 6149-F, 6150-F.)

INFORMATION FILED: February 26, 1945, Southern District of Iowa, against Arthur H. Beck, trading as the Beck's Salad Dressing & Catering Co., Davenport, Iowa.

ALLEGED SHIPMENT: On or about April 3, 1944, from the State of Iowa into the State of Illinois.

LABEL, IN PART: "Beck's 1 Qt. Butter Cream Brand Salad Dressing * * * Beck's Mayonnaise Products Davenport, Ia.," or "1 Qt. Beck's Salad Dressing * * * Victory Dressing * * * Beck's Mayonnaise Products Davenport, Iowa."

NATURE OF CHARGE: Butter Cream Brand Salad Dressing. Adulteration, Section 402 (b) (1), valuable constituents of the article had been in whole and in part omitted since the article was represented to be butter cream salad dressing, made from corn oil and other vegetable oil, whereas butter and cream had been in whole omitted and corn and other vegetable oils had been in part omitted, in the manufacture of the article; Section 402 (b) (2), a product containing a nonnutritive substance, mineral oil, and containing no butter or cream, had been substituted for butter cream salad dressing, a product which contains butter and cream and does not contain nonnutritive mineral oil; and, Section 402 (b) (4), mineral oil had been mixed and packed with the article so as to reduce its quality. Misbranding, Section 403 (a), the label statement "Butter Cream Brand Salad Dressing Contents, Eggs, Spices, Vinegar, Cereal, Vegetable Oil, Corn Oil & Sugar" was false and misleading since it represented and suggested that the article contained butter and cream; that the oil contained in the article consisted entirely of corn oil or other vegetable oil; and that the article was salad dressing, a product which does not contain mineral oil. The article did not contain butter and cream; the oil in the article did not consist entirely of corn oil or other vegetable oil, but did consist in part of mineral oil; and the article was not salad dressing, but was a product which contained mineral oil.

Victory Dressing. Adulteration, Section 402 (b) (2), a product containing a nonnutritive substance, mineral oil, had been substituted for salad dressing; and, Section 402 (b) (4), mineral oil had been mixed and packed with the

article so as to reduce its quality. Misbranding, Section 403 (a), the name of the article "Salad Dressing" and the label statement "Beck's Salad Dressing Victory Dressing" were false and misleading since the name and statement represented and suggested that the article consisted of salad dressing, a substance which does not contain mineral oil, whereas the article consisted of a substance containing mineral oil.

Both products. Misbranding, Section 403 (f), certain information required by law to appear on the labels of the articles was not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) as to render it likely to be read by the ordinary individual under customary conditions of purchase and use.

DISPOSITION: The defendant having filed a consolidated demurrer and motion to strike, the court, on November 8, 1945, sustained the defendant's motion to strike from the information the portions charging a violation of Section 403 (f), and overruled the demurrer and motion in all other respects.

On October 29, 1946, the defendant having entered a plea of not guilty, the case came on for trial before the court, and at its conclusion on October 30, 1946, the court handed down the following ruling and judgment, finding the defendant guilty:

THE COURT: "Gentlemen, I think this is a very interesting case, and I have listened to it with a great deal of interest, but I feel technically the defendant is guilty of each and all of the counts in the Information.

"In the First Count there is a charge of adulteration on the ground primarily that he used in his label the term 'Butter Cream Brand.' Now, of course, he uses the term or word 'Brand' in there, and I suppose a person shouldn't be misled by the use of that term as importing or inferring that it was a salad dressing, the basis of which was butter and cream; and yet, I think that that was the purpose of it and I think that it is misleading, and consequently I think that there was a misbranding in that sense. Also, for the same reason, I feel that it would be adulterated because there wasn't any butter or cream in it, and no ingredient in the dressing was butter or cream, but mineral oil was substituted.

"So, as to Count One, I find on the fact question that the product designated as 'Butter Cream' was adulterated in that butter and cream were not used in its manufacture, but other materials were substituted therefor; and I find as a matter of fact on Count Two of the Information that there was misbranding in that mineral oil was used instead of butter and cream or any ingredients that would take the place thereof.

"Counts Three and Four are based upon the idea of the Government that there was in the selling of the product designated as 'Victory Dressing' a standard as to what constitutes salad dressing, so that the use of mineral oil therein was a variance from, and not a part of, the standard as to what is a salad dressing. I have a rather different idea than has been suggested here by counsel for either side. I have listened to the evidence carefully, and I think, and I have come to the conclusion, that there is a secondary meaning of the word 'salad dressing' when used in connection with a manufactured product put out for a dressing for salads; that while 'salad dressing' itself is a generic term and would include any dressing for a salad, yet it has grown up to mean a dressing containing a vegetable oil with eggs and sugar and condiments and so forth, and the basis of it is a vegetable oil. But I don't think even that is necessary to determine the question of whether or not there was a misbranding and adulteration of the salad dressing by the use of this mineral oil.

"Now, I think the Court can take judicial notice of the fact that mineral oil is a non-nutrient oil. It is sold generally in drug stores and its primary purpose is for use in medicines, to oil up the alimentary canal of the human body. In its use as a food it has no nutritive value and would add nothing as an item of food such as a salad dressing; therefore, it comes as a shock to a person to say that mineral oil can be used under the designation of and in the sale of salad dressing, without the statement connected with the designation of the product on the label, prominently displayed, as being salad dressing; that is, labeled as a salad dressing containing a mineral oil which is non-nutritive. I think that is established or recognized by the defendant himself, because he says he is now putting out the product as a salad dressing containing mineral oil, and the mineral oil is on the label as a limitation on the word 'salad dressing.'

"So I think that the fact that the product was advertised as salad dressing was a misbranding and adulteration as it contained mineral oil substituted for vegetable oil.

"I therefore find as a finding of fact on Count III of the Information that the product designated as a salad dressing was misleading and an adulteration in that it contained a non-nutritive element known as mineral oil, which has no place in a salad dressing; and the mere use of the mineral oil for a dressing of that kind without a designation on the label that it is a part of the salad dressing, and a designation as 'salad dressing' without the designation on the label 'salad dressing containing mineral oil' is both a misbranding and an adulteration.

"As to Count Four, the same finding of fact.

"I therefore find the defendant guilty on Count One of the Information, Count Two of the Information, Count Three of the Information and Count Four of the Information, and it will be the sentence and judgment of the Court that he pay a fine of \$50.00 on each Count and the costs of this action.

"To all of which the defendant, Arthur H. Beck, excepts."

11281. Adulteration of salad dressing and adulteration and misbranding of salad oil. U. S. v. Gilmer W. Sparger (Puny's WOP Salad Dressing Co. and Puny Sparger). Plea of guilty. Fine, \$70 and costs. (F. D. C. No. 20176. Sample Nos. 21267-H, 24607-H, 24612-H, 24741-H, 25109-H.)

INFORMATION FILED: September 9, 1946, Eastern District of Oklahoma, against Gilmer W. Sparger, trading as Puny's WOP Salad Dressing Co. and Puny Sparger, Ardmore, Okla.

ALLEGED SHIPMENT: Between the approximate dates of June 13 and August 16, 1945, from the State of Oklahoma into the States of Kansas, Louisiana, and Texas.

LABEL, IN PART: "Puny's Famous WOP Salad Dressing," or "Puny's Famous Salad Oil."

NATURE OF CHARGE: Salad dressing. Adulteration, Section 402 (a) (1), the article contained an added deleterious substance, mineral oil, which may have rendered it injurious to health; and, Section 402 (b) (2), an article containing mineral oil, a nonnutritive substance, had been substituted in whole or in part for salad dressing, which does not contain nonnutritive oils.

Salad oil. Adulteration, Section 402 (b) (2), mineral oil, a nonnutritive substance, and extract of annatto seed, an artificial color, had been substituted in whole or in part for salad oil, a nutritive substance, which the article was represented to be. Misbranding, Section 403 (a), the label statement "Salad Oil" was false and misleading; and, in addition, the labeling of the article was misleading in that it failed to reveal facts material with respect to the consequences which may result from the use of the article under such conditions of use as are customary or usual for salad oil, since the article contained mineral oil, a substance which would interfere seriously with the assimilation of certain essential vitamins and minerals, and when used as salad oil, might render the product in which it was used injurious to health.

DISPOSITION: December 9, 1946. The defendant having entered a plea of guilty, the court imposed a fine of \$10 on each of the 7 counts, a total fine of \$70 and costs.

11282. Adulteration and misbranding of french dressing. U. S. v. 495 Bottles * * *. (F. D. C. No. 20298. Sample No. 1461-H.)

LABEL FILED: July 1, 1946, Northern District of Georgia.

ALLEGED SHIPMENT: On or about April 26, 1946, by Mid City Wholesale Grocers, from Chicago (Cicero), Ill.

PRODUCT: 495 8-ounce bottles of french dressing at Atlanta, Ga. This product was an artificially colored and diluted vinegar, with some flavoring and gum, and about one percent of oil. Oil is an integral part of french dressing.

LABEL, IN PART: "La-Fay French Dressing * * * Mfd. by The Daniels Food Products Co., Chicago, Ill."

NATURE OF CHARGE: Adulteration, Section 402 (b) (1), a valuable constituent, oil, had been in whole or in part omitted from the article.

Misbranding, Section 403 (a), the label designation "French Dressing" was false and misleading; and, Section 403 (b), the article was offered for sale under the name of another food, i. e., french dressing.